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SCOTT SCHLAGEHL—CHIEF OF STAFF
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December 1, 2009

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Chairman Genachowski:

On January 8, 2008, the House Energy and Commerce Committee's Subcommittee on Oversight and Investigations began a formal investigation into the FCC's regulatory processes and management practices. The Energy and Commerce Committee's findings identified a number of issues and provided a roadmap for an improved FCC under your leadership.

On September 17, 2009, the Subcommittee on Communications, Technology, and the Internet held its first hearing with the newly formed Commission. During this hearing, I reiterated to you and your fellow Commissioners the enormous responsibility your agency is tasked with and the need for the FCC to make decisions in a timely, thoughtful, and fair manner. However, it was stated that while the FCC may undergo a number of procedural and management reforms without additional Congressional authorization, there was at least one issue identified where Congressional action would be necessary.

Specifically, Commissioner Michael Copps identified provisions within the "Government in the Sunshine Act" that prohibit the Commission from operating in a truly collaborative nature. The "Sunshine Act" prohibits more than two Commissioners from discussing complex and contentious issues pending before the agency, in a private setting. I am concerned that this prohibition may have the unintended effect of inhibiting the necessary exchange of ideas and frank discussions that Congress expects from a multi-member body. In order to address this issue, I have introduced legislation (enclosed) that seeks to strike a balance between the need for transparency and increased collaboration among the FCC Commissioners.

My legislation authorizes the Commission to hold limited non-public, collaborative discussions when a bipartisan quorum is present. Such discussions will be monitored by the Office of General Counsel to ensure compliance with the Act, such as a prohibition on voting. No later than five days after such a discussion is held, the Commission would be required to publish on its website a summary of matters discussed at the meeting. These collaborative discussions will be restricted solely to FCC Commissioners and staff.

PLEASE REPLY TO:

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Congress of the United States
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Washington, DC 20515-2201

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The Commission will still be required to take official actions in a public forum. My legislation would expire five years after its enactment to allow Congress an opportunity to review its implementation and decide whether the public interest benefited.

I would appreciate a prompt response regarding my proposal from you and your fellow Commissioners. It is my hope, should my legislation be enacted, that the Commission will be better equipped to confront complex and contentious issues that have languished at the FCC for several years.

Sincerely,

A handwritten signature in black ink, reading "Bart Stupak". The signature is written in a cursive, flowing style. The first name "Bart" is written with a large, stylized "B" that loops around the first few letters. The last name "Stupak" is written in a more straightforward cursive.

BART STUPAK

Member of Congress

BTS/ef

CC: Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
Commissioner Meredith Attwell Baker



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 2, 2010

The Honorable Bart Stupak
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U.S. House of Representatives
2268 Rayburn House Office Building
Washington D.C. 20515

Dear Chairman Stupak:

Thank you for your letter expressing concern that the Government in the Sunshine Act inhibits the ability of FCC Commissioners to freely discuss and exchange ideas on the important policy issues we face. I appreciate this opportunity to respond to the issues you have raised and to review the legislation you have introduced.

Over the course of the last 25 years, experts in administrative law have noted that the Sunshine Act has had the unintended effect of limiting the collegial development of policy by multimember agencies. This view has been restated by chairmen and commissioners of multimember agencies, including the FCC. As you note in your letter, multimember agencies are created by Congress in order to assure that agency regulatory initiatives are a product of their members' collegial consideration, and reflect their varied perspectives. When agency members are hampered in discussing the issues with one another, their ability to craft consensus policies that further the aims of Congress and the interest of the American people likewise is hampered.

When I became Chairman, I announced a reform agenda to examine ways to improve the transparency and responsiveness of the Commission's decision-making processes. My regulatory reform team, led by Special Counsel Mary Beth Richards, is examining a wide range of issues, including whether the Sunshine Act enables the Commission to reach timely decisions in a collegial manner, and whether Congress and the public are readily able to understand how our decisions are reached.

In the upcoming months, Commission decisions on a series of issues, including the deployment of broadband capability to all Americans and the creation of a 21st Century public safety communications network, will affect the lives and wellbeing of virtually every American. It is more important today than ever before to assure that Commission decisions reflect the collegial contribution of all of the Commissioners reached by thorough analysis and debate among them. For this reason, I welcome reexamination of the Sunshine Act, and I look forward

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to working with you as our staff reform team refines its work. I trust that in this way we may be a resource for you and your colleagues as you consider legislation in this area.

Sincerely,



Julius Genachowski
Chairman